

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUSAN GETZ : CIVIL ACTION  
 :  
 v. :  
 :  
 COMMONWEALTH OF PENNSYLVANIA BLINDNESS :  
 AND VISUAL SERVICES : NO. 97-7541

**MEMORANDUM AND ORDER**

HUTTON, J.

December 17, 1998

Presently before this Court is pro se Plaintiff Susan Getz's Motion to Compel Answers to Request for Production of Documents (Docket No. 13) and Defendants' Response to Plaintiff's Motion to Compel and Motion for Protective Order (Docket No. 14). For the reasons stated below, the Plaintiff's Motion is **GRANTED in part and DENIED in part** and Defendant's Motion is **GRANTED in part and DENIED in part**.

**I. BACKGROUND**

In the underlying action, pro se Plaintiff Susan Getz ("Plaintiff") alleges that she was harassed by her supervisor while working for the Defendant, Commonwealth of Pennsylvania Blindness and Visual Services ("BVS"), who then retaliated against the Plaintiff after she filed a complaint with the Equal Employment Opportunity Commission ("EEOC"). On July 16, 1998, the Plaintiff filed an Amended Complaint alleging sex, race and religious

discrimination under Title VII of the Civil Rights Act of 1964. Now, the Plaintiff seeks to compel the production of certain documents withheld by Defendant in response to discovery requests. Specifically, the Plaintiff requests this Court to compel Defendants to produce all documents requested in Numbers 5, 9, 17 and 20 of its Requests for Production of Documents. Besides objecting to these discovery requests, the Defendants also seek a protective order regarding these same document requests.

## **II. DISCUSSION**

In request No. 5, the Plaintiff seeks all EEOC and Pennsylvania Human Relation Commission ("PHRC) complaints filed by any employees of Blindness and Visual Services ("BVS") against the Defendant since 1975. In request No. 9, the Plaintiff seeks personnel files of eight other employees of BVS. In request No. 17, the Plaintiff requests a letter dated May 6, 1996, "as mentioned in paragraph 34 of [defendants'] answer" to the complaint. In request No. 20, Plaintiff seeks written reprimands or other disciplinary measures issued to any BVS employee within the last ten years for infractions related to vendor payments.

Defendants objected to requests nos. 5, 9 and 20 on the grounds that these documents are not relevant to the subject matter involved in this case, not reasonably calculated to lead to the discovery of admissible evidence and seeks privileged and confidential information relating to other employees of BVS.

Defendants contend that they have already complied with request no. 17.

Under Federal Rule of Civil Procedure 26(b)(1), parties may obtain discovery regarding "any matter, not privileged, which is relevant to the subject matter involved in the pending action." The Rule's relevancy requirement is to be construed broadly, and material is relevant if it bears on, or reasonably could bear on, an issue that is or may be involved in the litigation. Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 350 (1978). However, it is also well settled that:

[D]iscovery in Title VII cases involving highly individualized claims of discriminatory treatment should be restricted to the practices at issue in the case, applied to employees in similar circumstances to determine if the employer treats all of its employees under those circumstances in the same manner, or whether it treats employees similarly circumstanced differently and there is some basis for concluding that the difference in treatment is predicated on race, sex or some other grounds of unlawful discrimination.

Suggs v. Capital Cities/ABC, Inc., 122 F.R.D. 430, 431 (S.D. N.Y. 1988) (quoting Hardrick v. Legal Services Corp., 96 F.R.D. 617, 619 (D.D.C. 1983)).

"A disparate treatment violation is made out when an individual of a protected group is shown to have been singled out and treated less favorably than others similarly situated on the basis of an impermissible criterion under Title VII." E.E.O.C. v. Metal Serv. Co., 829 F.2d 341, 347 (3d Cir. 1990). Discovery in disparate treatment cases has been limited to employees within

certain work units and who have suffered similar treatment as the plaintiff. Robbins v. Camden City Bd. of Education, 105 F.R.D. 49 (D.N.J. 1985). See e.g., Smith v. Stratus Computer, Inc., 40 F.3d 11, 17 (1st Cir. 1994) (plaintiff vice-president, whose supervisor was dissatisfied with her performance, was not similarly situated to other vice-presidents where there was no evidence that the supervisor of the other vice-presidents were dissatisfied with their performance).

### **1. Request No. 9**

Nowhere does Plaintiff offer any basis for how the personnel files she seeks are relevant to her claim of disparate treatment or her claim of a pattern and practice of discriminating against employees similarly situated. Rather, Plaintiff offers only the conclusory assertion that the files are relevant because she must investigate how other employees were treated. Yet, Plaintiff has made no real showing that these eight individuals suffered similar treatment and, without a showing of such relevance, Plaintiff is not entitled to discovery. See Clark v. Universal Builders, Inc., 501 F.2d 324, 340 (7th Cir.), cert. denied, 419 U.S. 1070 (1974); and McClain v. Mack Trucks, Inc., 85 F.R.D. 53, 57-58 (E.D. Pa. 1979). See also United States v. Conconi, 957 F.2d 942, 949 (1st Cir. 1992) ("[m]ere speculation as to the content of documents is hardly a showing of relevance.")

Nor has Plaintiff made a showing that these personnel files would demonstrate and/or support a claim of a pattern or practice of discrimination. "In order to prove a pattern or practice of discrimination, a plaintiff must show more than accidental or sporadic incidents of discrimination; she must show that 'discrimination was the company's standard operating procedure--the regular rather than the unusual practice.'" Pitre v. Western Electric Co., 843 F.2d 1262, 1267 (10th Cir. 1988) (quoting International Broth. of Teamsters v. U.S., 431 U.S. 324, 333 & n. 16 (1977)). See also Jensen v. Frank, 912 F.2d 517, 523 (1st Cir. 1990) ("[a] single instance of favoritism, even if proved, falls considerably short of showing an ongoing pattern and practice"); Ste. Marie v. Eastern R. Asso., 650 F.2d 395, 406 (2d Cir. 1981) (two individual acts of discrimination insufficient to prove a practice of discrimination); and Wingfield v. United Technologies Corp., 678 F. Supp. 973, 981 (D.Conn. 1988) ("evidence of individual and discrete incidents of discrimination ... is inadequate to support a claim that there has been a pattern and practice of discrimination.")

Moreover, personnel files contain perhaps the most private information about an employee within the possession of an employer. Nonetheless, Plaintiff requests the Court to order the Defendant to hand over entire files of employees without any particularized showing that any, let alone all, of the information

therein is relevant to her claims. Again, while discovery is usually broad, Plaintiff has not demonstrated that the files she seeks, even if marginally relevant, outweigh the privacy interests of these individuals. See Miles v. Boeing, Co., 154 F.R.D. 112, 115 (E.D. Pa. 1994) (personnel files are confidential and discovery of them should be limited); and Gehring v. Case Corp., 43 F.3d 340, 342 (7th Cir. 1994) (upholding District Court decision that releasing personnel files of others would violate privacy interests), cert. denied, --- U.S. ----, 115 S.Ct. 2612 (1995).

To the extent that one or more of the individuals whose personnel files Plaintiff seeks might be witnesses for the Plaintiff, she may well be able to get access to a particular personnel file with consent of that witness and without running afoul of Defendant's obligation to ensure privacy. Mindful that the Plaintiff is pro se, in the absence of consent and without any basis for violating the privacy of those employees, and for the reasons already stated, Plaintiff's motion with respect to Request No. 9 is denied.

## **2. Request No. 20**

Nowhere does Plaintiff offer any basis for how the written reprimands or other disciplinary measures issued to any BVS employee within the last ten years for a refraction related to vendor payments are relevant to her claim of disparate treatment or her claim of a pattern and practice of discriminating against

employees similarly situated. Again, the Plaintiff offers only the conclusory assertion that the files are relevant because she must investigate how other employees were treated. Defendants advise the Court that they are unsure whether any such documents exist; however, if they did, they would be contained within the personnel records of BVS employees. Thus, because the Plaintiff has not provided any reasons which would warrant divulging this confidential information and for the reasons stated above, Plaintiff's motion with respect to Request No. 20 is denied.

### **3. Request No. 5**

Complaints filed with the EEOC and PHRC against BVS are relevant to the Plaintiff's claim of disparate impact. Because the Court does not have the same privacy concerns regarding request No. 5 as it does regarding requests Nos. 9 and 20, the Court grants the Plaintiff's motion regarding all EEOC and PHRC complaints filed by any employees of BVS against the Defendant since 1975.

### **4. Request No. 17**

Paragraph 34 of the Defendants' answer referred to a letter dated October 6, 1996--not May 6, 1996--from Merlyne Harvey to the Plaintiff, advising her of a pre-disciplinary conference.<sup>1</sup> Defendants advise the Court that a copy of this letter was provided

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1. Plaintiff advises the Court that this was a typographical error. The letter was actually dated October 2, 1996.

to the Plaintiff in response to request number 11 and referred to in response to request number 17.

**5. Defendants' Request for Sanctions**

The Court denies Defendants' Motion for Sanctions including the cost of attorney's fees associated with filing this motion. Such fees are appropriate under Rule 37(a)(4)(A),

unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

Fed. R. Civ. P. 37(a)(4)(A). Circumstances of the instant matter do not justify an award of expenses.

An appropriate Order follows.



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v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA BLINDNESS	:	
AND VISUAL SERVICES	:	NO. 97-7541

**O R D E R**

AND NOW, this 17th day of December, 1998, upon consideration of pro se Plaintiff Susan Getz's Motion to Compel Answers to Request for Production of Documents (Docket No. 13) and Defendants' Response to Plaintiff's Motion to Compel and Motion for Protective Order (Docket No. 14), IT IS HEREBY ORDERED that the Plaintiff's motion is **GRANTED in part and DENIED in part** and Defendants' Motion is **GRANTED in part and DENIED in part**.

IT IS FURTHER ORDERED THAT:

(1) Defendant SHALL provide all documents requested in the Plaintiff's Request for Production of Documents No. 5.

BY THE COURT:

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HERBERT J. HUTTON, J.